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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,098	12/20/2000	Carlos Orlando Vilacha Zanoni	286765-00001	8858
7590	03/24/2005		EXAMINER	
David C. Jenkins Eckert Seamans Cherin & Mellott, LLC 600 Grant Street, 44th Floor Pittsburgh, PA 15219			NEWHOUSE, NATHAN JEFFREY	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/745,098	VILACHA ZANONI ET AL. <i>ed</i>
	Examiner	Art Unit
	Nathan J. Newhouse	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 - 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1. As indicated in applicant's response filed 12/27/2004, claims 14-16 are withdrawn. A complete response to this final office action should include cancellation of these claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Punte (US 2,327,455).

Punte teaches a crown closure comprising a shell having a top, a curved portion (13), a liner (12) and a skirt (10). The skirt has a plurality of serrations (11) as shown in the figures. The curve portion (13) is "adapted to be the same shape" as the mouth of the bottle (14). See page 2, left column, lines 20-29.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Leenaards (US 3,827,594).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been an obvious matter of design choice to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Leenaards teaches a similar crown closure with a radius of a curved portion between the top and skirt being 2 to 5 mm, the diameter of the shell of the crown closure being 20 to 40 mm and the skirt of the crown closure having 21 serrations for a 25 mm diameter crown closure. As Leenaards teaches that these dimensions are

known in the crown closure art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize these dimensions to make the crown closure of Punte.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Ferngren (US 2,099,056).

Punte teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween.

Ferngren teaches a similar bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and bottle neck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Punte with an upper portion and lower portion with a fulcrum therebetween as taught by Ferngren to improve the seal between the closure and bottle.

Response to Arguments

7. Applicant's arguments filed December 27, 2004 have been fully considered but they are not persuasive.

Applicant argues that Punte does not teach a curved portion that is adapted to be the same shape as the mouth contour of the bottle and/or that the serrations do not project into the curved portion. First with respect to the curved portion that is adapted to be the same shape as the mouth contour of the bottle. See page 2, left column, lines

20-29. Punte states the crown top and the turn thereof at 9 into the skirt are reshaped or deformed as at 13 (curved portion) to conform perfectly to the sealing surface presented by the neck 14 of the bottle. With respect to the serrations not extending into the curved portion, reference is made to the figures of Punte. Clearly figure 2 of Punte shows the serrations(lines in skirt 10) stop short of the curved portion. In addition none of the other figures shown that the serrations do extend into the curved portion of the crown closure. Therefore, the serrations must not extend into the curved portion.

Applicant further argues the Punte does not teach a liner. This argument is incorrect as Punte does teach a liner 12 as set forth in the rejection above.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leenaards teaches the known dimensions with respect to the radius of the curved portion being about 4mm, the shell blank having a diameter of 35.5mm and the shell having 20 serrations. As set forth in the 35 USC 103 rejection above, Punte teaches everything except for these specifications or dimensions. It would have been obvious to one of ordinary skill in the art to make the crown closure of Punte with these specifications or dimensions as Leenaards teaches that it is known to make crown closures with these

dimensions or specifications. Furthermore discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Alternatively, a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to applicant's arguments concerning the combination of Leenaards '594 and Ferngren '056, applicant argues that there is no teaching or suggestion to combine. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Leenaards teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween. Ferngren teaches a bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and the bottleneck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Leenaards with an upper portion and a lower portion and a fulcrum therebetween as taught by Ferngren to improve the seal between the closure and bottle. Applicant further argues that the

closure of Ferngren being made of plastic and the metal crown closure of Leenaards are two different types of closures and therefore the teachings are not combinable. Ferngren is cited for the teaching of a fulcrum on a glass bottleneck and not the material used to make the closure.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

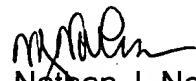
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (571)-272-4544. The examiner can normally be reached on Monday-Thursday, 6:00 to 4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (571)-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan J. Newhouse
Primary Examiner
Art Unit 3727